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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 766

FRANCISCO PARADA-GONZALEZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

No opinion was issued by the court of appeals.

JURISDICTION

The judgment of the court of appeals was entered on November 1, 1965 (R. III, 58b). The petition for a writ of certiorari was filed on November 26, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that petitioner participated in a conspiracy to obtain permanent residence for an alien by fraudulent marriage to a citizen.

2. Whether the trial court erred in admitting into evidence the statement of a co-conspirator to the Immigration and Naturalization Service made in petitioner's absence.

STATEMENT

An indictment returned in the United States District Court for the Southern District of New York charged in substance that from December 27, 1959, to about March 2, 1962, petitioner, co-defendant Fojon, and one Manuela Ramirez conspired (in violation of 18 U.S.C. 371) to violate 18 U.S.C. 1001 (false statements) and to defraud the government. The alleged conspiracy was that petitioner would arrange for Mrs. Ramirez, a United States citizen, to participate in a fraudulent marriage with Fojon, which would be terminated by a divorce after Fojon was admitted to the United States for permanent residence (R. I, 6a-8a). The jury found petitioner and Fojon guilty on Count 1 (R. I, 65a),[1] and petitioner was sentenced to imprisonment for one year (R. I, 69a-70a). On appeal, the conviction was affirmed by the

[1] Fojon was also found guilty on Count 2, which charged him alone with a substantive violation of 18 U.S.C. 1001 (R. I, 55a-56a, 65a).

court of appeals without opinion (R. I, 71a-72a; R. III, 58b).

1. The government's evidence showed that Mrs. Ramirez, a waitress working at petitioner's restaurant (R. I, 18a), was introduced to Fojon by petitioner. When petitioner asked whether she wanted to marry Fojon, she told petitioner to stop joking (R. I, 19a-20a). The next day petitioner told Mrs. Ramirez that Fojon would give her money to marry him, and that, if she did so, "nothing would happen to [her]" and "no one would know about it" (R, I, 20-21). In answer to a question by Mrs. Ramirez, petitioner said that the object of the marriage was to secure Fojon's residence in New York (R. I, 22a). Petitioner also told Mrs. Ramirez that Fojon would give her a divorce within a year (R. I, 23a-24a). On the following day, petitioner informed her that if she married Fojon she would have to permit Fojon to use her home address as his address (R. I, 22a).

During the first week of January 1960, petitioner again introduced Fojon to Mrs. Ramirez as "the fellow about whom I spoke to you" (R. I, 24a), and left them to converse alone in a booth. Fojon said that he would give her 300 pesos to marry him; that she would not have to live with him but would have to put his name on her mailbox so that he could get his mail there; that he would give her a divorce within a year; and that if the Immigration people came she should say that "he was living there and that [they] had gotten married for love" (R. I, 24a-25a).

On February 4, 1960, Mrs. Ramirez married Fojon at City Hall, giving as the address of the parties her

apartment at 1405 Fifth Avenue (R. I, 26a-27a). (Before the marriage, Mrs. Ramirez had told Fojon that she was living at this address with another man, with whom she was still living at the time of the trial (R. III, 29b-30b).) Fojon paid Mrs. Ramirez $300 on the day of the marriage (R. I, 28a). He never resided at her apartment and the marriage was never consummated (R. I, 29; R. III, 24b, 32b-33b, 54b-57b). In accordance with Fojon's instructions, Mrs. Ramirez delivered to petitioner mail addressed to Fojon at her apartment (R. III, 23b). Shortly after the marriage, Mrs. Ramirez and Fojon made successful application to the Immigration Service for issuance of an immigrant visa to Fojon as a permanent resident, based upon his marriage to an American citizen (R. I, 29a-30a, 52a; R. II, 13a).

2. On March 9, 1961, an Immigration Service agent who was investigating the *bona fides* of the marriage asked Mrs. Ramirez at 1405 Fifth Avenue where her husband was. She replied that he was at work. When the agent asked whether she had any of his clothes, she showed him clothes of the man (Leroy Emanuel) with whom she was living (R. III, 17b-19b, 37b-39b). An appointment was made for Mrs. Ramirez to go to the Immigration Service office to make a statement (R. III, 38b). After the interview, Mrs. Ramirez telephoned Fojon and later spoke to him in person (R. III, 19b).

On March 16, 1961, Mrs. Ramirez went to the Service office, where she made a statement (Gov. Ex. 6) (R. III, 20b). Just before this, Fojon had given Mrs. Ramirez a paper with some addresses, and told

her not to forget to say that he was living in her home, that she had married for love, and that his address was on her mail box so that he could receive his correspondence there (R. III, 19b-20b, 23b). The statement (Gov. Ex. 6) was admitted in evidence over defense objection that the defendants had not been present and had not participated in the questioning (R. I, 10a-11a). In so ruling, the court instructed the jury (R. I, 11a-12a):

* * * *

> At this time, we will receive this exhibit without qualification as against Manuela Ramirez, as she is referred to in that exhibit, Manuela Ramirez Fojon, without reservation. The answers that are purportedly contained therein were her answers, and so they are binding upon her at once.
>
> The other two defendants were not present, but since the claim is that there was a conspiracy, if it should be established there is sufficient evidence upon which to determine that a conspiracy did exist, then any statement made by one of the conspirators or any acts performed by any one of the conspirators in furtherance of the conspiracy and during its existence is binding on the other persons found to be members of the conspiracy, even though they were not present.
>
> * * * this exhibit will be received subject to what we term a motion to strike. If eventually the Court should conclude that there is insufficient evidence upon which to determine that a conspiracy existed, then all this evidence will be stricken against the other defendants, who were not present.

We will receive it at this time under those terms.

I should add that although the female person Ramirez Fojon is not a defendant, nevertheless the claim is that she is a member of the conspiracy.

Received on that basis.[2]

Mrs. Ramirez testified at the trial that some of her answers in Gov. Ex. 6, to the effect that her husband, Fojon, still resided with her and always came home for weekends, were not true (R. III, 20b-22b).

ARGUMENT

1. Contrary to petitioner's contention (Pet. 8-10), the government's evidence was sufficient to support his conviction as a guilty participant in the conspiracy alleged in Count 1.[3] The evidence showed that petitioner introduced Mrs. Ramirez to Fojon and told her Fojon would pay her money if she would marry him. His statements that "nothing would happen" to Mrs. Ramirez and that she would get a divorce within a year indicate that he understood the marriage would not be consummated. Petitioner told Mrs. Ramirez that the object of the marriage was to get residence for Fojon and that she would have to permit Fojon to use her address as his address. In ac-

[2] The substance of this instruction was also included in the court's final charge to the jury (R. I, 46a-48a).

[3] *A fortiori*, there was sufficient evidence at the end of the government's case to warrant denial of the motion for acquittal at that time. Petitioner's attack upon that denial (Pet. 11-14) is therefore without merit.

cordance with Fojon's instructions, Mrs. Ramirez turned over to petitioner mail addressed to Fojon at her address. From all these circumstances, the jury could reasonably infer that petitioner was an active participant in the conspiracy and knew that the marriage would not be consummated in good faith and that the parties would attempt to conceal from the Immigration authorities the true facts behind the purported marriage. See *Lutwak* v. *United States*, 344 U.S. 604; *United States* v. *Rubenstein*, 151 F. 2d 915 (C.A. 2), certiorari denied, 326 U.S. 766.[4]

2. The trial court did not err in admitting into evidence the statement given by Mrs. Ramirez to Immigration officers on March 16, 1961 (Gov. Ex. 6). The acts and statements of one partner made in the furtherance of a conspiracy and before its termination are admissible against the others. *Delli Paoli* v. *United States*, 352 U.S. 232, 237; *Lutwak* v. *United States*, 344 U.S. 604, 617; *Fiswick* v. *United States*, 329 U.S. 211, 217. Since Mrs. Ramirez was a co-conspirator and the statement was designed to carry

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[4] Unlike *United States* v. *Vazquez*, 319 F. 2d 381 (C.A. 3), where the wife believed that the marriage was to be in good faith and not in form only, Mrs. Ramirez was well aware that her marriage to Fojon was not entered into in good faith. *United States* v. *Diogo*, 320 F. 2d 898 (C.A. 2), is distinguishable from the present case for there the court interpreted the charge against defendants as narrowly limited to falsely representing that there was a "marriage", and held that the government had failed to prove that the marriage was void under State law so as to make the representation false. The conspiracy charged here was to deceive the Immigration authorities through a fraudulent—whether or not technically void—marriage.

out the plan of leading the Immigration authorities to believe the marriage was valid, it was therefore admissible.

There was no prejudice to petitioner by reason of the court's charge that the statement was received "without qualification" against Mrs. Ramirez, since the jury was told that although Mrs. Ramirez was "not a defendant, nevertheless the claim is that she is a member of the conspiracy" (R. I, 12a). And the jury was correctly instructed that it had to find that the conspiracy was in existence at the time Mrs. Ramirez's statement was made before they could consider it against petitioner (see Pet. 14-15).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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